

## **32.009**

## **48 CFR Ch. 1 (10–1–15 Edition)**

### **32.009 Providing accelerated payments to small business subcontractors.**

#### **32.009–1 General.**

Pursuant to the policy provided by OMB Memorandum M–12–16, Providing Prompt Payment to Small Business Subcontractors (and as extended by OMB Memoranda M–13–15 and M–14–10, both titled Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors), agencies shall take measures to ensure that prime contractors pay small business subcontractors on an accelerated timetable to the maximum extent practicable, and upon receipt of accelerated payments from the Government. This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

[78 FR 70479, Nov. 25, 2013, as amended at 79 FR 43591, July 25, 2014]

#### **32.009–2 Contract clause.**

Insert clause 52.232–40, Providing Accelerated Payments to Small Business Subcontractors, in all solicitations and contracts.

[78 FR 70479, Nov. 25, 2013]

### **Subpart 32.1—Non-Commercial Item Purchase Financing**

#### **32.100 Scope of subpart.**

This subpart provides policies and procedures applicable to contract financing and payment for any purchases other than purchases of commercial items in accordance with part 12.

[60 FR 49710, Sept. 26, 1995]

#### **32.101 Authority.**

The basic authority for the contract financing described in this part is contained in 41 U.S.C. chapter 45, Contract Financing, 10 U.S.C. 2307, and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091).

[79 FR 24211, Apr. 29, 2014]

### **32.102 Description of contract financing methods.**

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

(1) Payments based on the percentage or stage of completion accomplished;

(2) Payments for partial deliveries accepted by the Government;

(3) Partial payments for a contract termination proposal; or

(4) Performance-based payments.

(c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Payments for accepted supplies and services that are only a part of the contract requirements (*i.e.*, partial deliveries) are authorized under 41 U.S.C. chapter 45 and 10 U.S.C. 2307. In accordance with 5 CFR 1315.4(k), agencies must pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although payments for partial deliveries generally are treated as a method of payment and not as a method of contract financing, using partial delivery payments can assist contractors to participate in contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements must permit acceptance and payment for discrete portions of the work, as soon as accepted (see 32.906(c)).